

IN THE  
SUPREME COURT OF MISSOURI

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STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	No. SC94959
	)	
ADRIANO CLARK,	)	
	)	
Appellant.	)	

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APPEAL TO THE SUPREME COURT OF MISSOURI  
FROM THE CIRCUIT COURT OF  
WEBSTER COUNTY, MISSOURI  
THIRTIETH JUDICIAL CIRCUIT  
THE HONORABLE DONALD CHEEVER, JUDGE

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APPELLANT'S SUBSTITUTE REPLY BRIEF

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Samuel Buffaloe, Mo. Bar No. 63736  
Attorney for Appellant  
Woodrail Centre  
1000 West Nifong  
Building 7 Suite 100  
Columbia, Missouri 65203  
(573) 777-9977  
Fax (573) 777-9974  
Email: Sam.Buffaloe@mspd.mo.go

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### **JURISDICTIONAL STATEMENT**

Appellant adopts the Jurisdictional Statement from his initial brief.

### **STATEMENT OF FACTS**

Appellant adopts the Statement of Facts from his initial brief.

## ARGUMENT

**The trial court erred in overruling Mr. Clark’s motion for judgment of acquittal after the close of all evidence and entering judgment and sentence for possession of a controlled substance because this violated Mr. Clark’s right to due process guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, section 10 of the Missouri Constitution, in that there was insufficient evidence to prove beyond a reasonable doubt either that Mr. Clark knew about the drugs in the east bedroom or that he exercised control over them; the drugs were found in closed pouches, and there was no further evidence presented connecting Mr. Clark to the drugs.**

In its Respondent’s brief, the State alleges that Mr. Clark is “isolating specific facts that connected him to the drugs and analyzing them in a vacuum.” (Rsp. Brf. 17). It is true that counsel argued why each piece of the allegedly incriminating evidence produced by the State lacks probative value. (App. Brf. 20-25). However, this was certainly not *all* that was discussed in the brief.

Additionally, the brief detailed the facts of four virtually indistinguishable past Missouri cases. (App. Brf. 16-20); *See State v. Withrow*, 8 S.W.3d 75 (Mo. banc 1999); *State v. Morris*, 41 S.W.3d 494, 498 (Mo. App. E.D. 2000); *State v. Tomes*, 329 S.W.3d 400 (Mo. App. E.D. 2010); and *State v. Ramsey*, 358 S.W.3d 589 (Mo. App. S.D. 2012). Comparing the totality of the evidence produced by the State in each of these past cases

to the totality of the evidence produced by the State in the present case shows why Mr. Clark's conviction for possession of a controlled substance must be reversed.

Of these four past cases, the State addresses only *Withrow*. (Rsp. Brf. 19-20). The State asserts that *Withrow* is distinguishable because "the evidence connecting Appellant to the methamphetamine in the present case, was far more abundant and more compelling than the evidence in *State v. Withrow*." (Rsp. Brf. 19). However, the State bases this argument on the unsupportable premise that Mr. Clark actually lived at the house with Ms. Dieckmeyer. (Rsp. Brf. 19). This constitutes unreasonable speculation because the only evidence to support this premise is that Mr. Clark was in a relationship with Ms. Dieckmeyer and that Mr. Clark kept "numerous clothes, a toolbox, [and] items of that nature" in a different bedroom of the house. (TR 10). However, the State failed to present evidence that would have shown Mr. Clark lived in the house such as Mr. Clark keeping a toothbrush or other hygiene items at the house, receiving mail at the house, keeping furniture at the house, or keeping electronics such as computers or televisions at the house. Based on this lack of evidence, the State is not entitled to the speculative inference that Mr. Clark actually lived at the house. *See State v. Whalen*, 49 S.W.3d 181, 184 (Mo. banc 2001). Instead, viewing the evidence in the light most favorable to the verdict, it can be inferred that Mr. Clark was a frequent visitor to the house. This is similar to the defendant in *Withrow*, who was seen going from the house in question on "five or six occasions" over a two day period and kept a piece of mail in a different bedroom in the house and 8 S.W.3d at 77.

The State fails to address the fact that the defendant in *Withrow* was seen coming from a bedroom that was emitted a solvent-like odor associated with the production of methamphetamine. *Id.* The State also fails to address the fact that numerous items used to produce methamphetamine were found in plain sight in the bedroom, along with firearms and ammunition. *Id.* In contrast, the drugs in the present case were found hidden in closed pouches. (TR 20-21).

The State notably does not even attempt to distinguish the facts of *Morris*, *Tomes*, or *Ramsey*. This is unsurprising since the defendants in *Ramsey*, 358 S.W.3d at 590 and *Tomes*, 329 S.W.3d at 401-02 *did* live in the houses in question and *did* sleep in the bedrooms in question. However, the defendants' convictions were still properly reversed.

Analyzing the totality of the evidence in the present case should necessarily involve a comparison with the full facts of past sufficiency cases. However, the State has offered no case with remotely similar facts to the present case where the defendant's conviction was affirmed on appeal. Instead of Mr. Clark failing to consider the totality of the circumstances, it is therefore the *State* that has failed in this endeavor.

The State argues that Mr. Clark's conviction should be affirmed based on the fact that he was sitting next to the (hidden) drugs on a bed, a pair of men's shoes and a cellular phone<sup>1</sup> purportedly belonging to Mr. Clark were sitting next to the drugs, and Mr. Clark had \$560 of cash in his pockets. (Rsp. Brf. 13). The State's argument is refuted

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<sup>1</sup> The State has seemingly conceded by omission that there was not any proof that the knife box belonged to Mr. Clark

both by the cases previously cited by Mr. Clark and by *State v. Whites*, 402 S.W.3d 140, 144-45 (Mo. App. W.D. 2013).

In *Whites*, the defendant was riding in the passenger seat in a truck. *Id.* The truck was stopped by a police officer due to the fact that the truck had “an inoperable license plate lamp and license plates issued for a passenger car.” *Id.* Another police officer noticed two Ziploc bags containing methamphetamine “near the curb about ten to fifteen feet behind where the truck had stopped.” *Id.* The two men were arrested, and the officers found that the defendant had \$1,346 in his wallet. *Id.* While the officers were searching the truck, they noticed a very strong odor of marijuana. *Id.* They also found “a backpack sitting in the truck bed in the corner, directly behind the passenger seat.” *Id.* In the backpack, the officers found “a digital scale, a white trash bag containing 613.34 grams of processed marijuana, and some personal grooming items.” *Id.* at 141-42. The defendant told the officer that he was not employed. *Id.* at 142. At trial, the defendant was acquitted of possessing the methamphetamine next to the curb; however, with regard to the items found in the backpack, the defendant was found guilty of possession with intent to distribute. *Id.*

The Western District Court of Appeals rejected the State’s argument that it could “be reasonably inferred that [the backpack] was placed there by the current passenger” of the truck. *Id.* at 143. The Court also pointed out that although there was a strong odor of marijuana, the marijuana was not in plain sight. *Id.* at 145. Finally, the Court determined that “[t]he simple fact that Appellant had \$1,346 in cash in his wallet does not allow for a reasonable inference that he exercised control over the marijuana in the backpack.” *Id.* at



146. The Court stated that “unlike *Jackson*<sup>2</sup>, the record does not reflect the denomination of the cash found on Appellant was in amounts typically used in drug transactions.” *Id.* In reversing the defendant’s conviction, the Court stated: “[c]onsidering the totality of the circumstances, the evidence presented in this case was insufficient to give rise to a reasonable inference that Appellant exercised control over the marijuana found in the backpack in the bed of the truck.” *Id.*

In the present case, the State presented less evidence of knowledge and control than in *State v. Withrow*, 8 S.W.3d at 75; *State v. Morris*, 41 S.W.3d at 494; *State v. Tomes*, 329 S.W.3d at 400; *State v. Ramsey*, 358 S.W.3d at 589; or *State v. Whites*, 402 S.W.3d 140. This Court stated in *State v. Honeycutt* that the principle of *stare decises* “promotes stability in the law by encouraging courts to adhere to precedents.” 421 S.W.3d 410, 422 (Mo. banc 2013). Under this principle, Mr. Clark’s conviction for possession of a controlled substance must be reversed.

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<sup>2</sup>*State v. Jackson*, 304 S.W.3d 791 (Mo. App. W.D. 2010).

## **CONCLUSION**

Because there was insufficient evidence that Mr. Clark had knowledge of the drugs in closed pouches or that he exercised control over them, his conviction for possession of a controlled substance must be reversed, and he should be ordered discharged from that count.

Respectfully submitted,

/s/ Samuel Buffaloe

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Samuel Buffaloe, MO Bar No. 63736  
Attorney for Appellant  
Woodrail Centre  
1000 W. Nifong, Building 7, Suite 100  
Columbia, MO 65203  
Tel (573) 777-9977  
Fax (573) 777-9974  
Email: Sam.buffaloe@mspd.mo.gov

**Certificate of Compliance and Service**

I, Samuel Buffaloe, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2010, in Times New Roman size 13 point font. Excluding the cover page, the signature block, and this certificate of compliance and service, the reply brief contains 1,534 words, which does not exceed the 7,750 words allowed for an appellant's reply brief.

On this 29<sup>th</sup> day of August, 2015, an electronic copy of Appellant's Substitute Reply Brief was placed for delivery through the Missouri e-Filing System to Andrew Hooper, Assistant Attorney General, at Andrew.Hooper@ago.mo.gov.

/s/ Samuel Buffaloe

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Samuel Buffaloe, MO Bar No. 63736